

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

GREGORY A FIGEL,

Plaintiff,

v.

Case No. 2:04-cv-164
HON. GORDON J. QUIST

GERALD RILEY, et al.,

Defendants.

OPINION AND ORDER APPROVING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION

The Court has reviewed the Report and Recommendation filed by the United States Magistrate Judge in this action on. The Report and Recommendation was duly served on the parties. The Court has received objections from the plaintiff and defendants. In accordance with 28 U.S.C. § 636(b)(1), the Court has performed *de novo* consideration of those portions of the Report and Recommendation to which objection has been made. The Court now finds the objections to be without merit.

Plaintiff argues that his Religious Land Use and Institutionalized Persons Act claim should not be dismissed. Plaintiff filed this action on July 29, 2004. At that time, the Sixth Circuit had previously ruled that the Act was unconstitutional in *Cutter v. Wilkinson*, 349 F.3d 257 (6th Cir. 2003). Therefore, defendants are entitled to qualified immunity on this issue.

Defendants argue that they were not personally involved in depriving plaintiff of his asserted constitutional rights. Plaintiff has presented sufficient allegations to establish each of the

defendants' involvement in the alleged claims. Plaintiff further has alleged that defendants conspired against him to remove him from the kosher meal program. Moreover, plaintiff has sufficiently shown that a genuine issue of fact exists on his retaliation claims. Finally, whether plaintiff's freedom of religion rights were violated by defendants is a question of fact.

THEREFORE, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge is approved and adopted as the opinion of the court.

IT IS FURTHER ORDERED that defendants' Motion for Summary Judgment (Docket #45) is GRANTED IN PART AND DENIED IN PART. Defendants' motion is GRANTED as to plaintiff's RLUIPA claims and DENIED as to plaintiff's First Amendment claims.

Dated: August 25, 2005

/s/ Gordon J. Quist

GORDON J. QUIST

UNITED STATES DISTRICT JUDGE